

**A Assunta Hospital v YB Menteri Sumber Manusia,
 Malaysia & Ors**

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL
REVIEW NO R1-25-01 OF 2002

RAUS SHARIF J

B 25 SEPTEMBER 2003

*Administrative Law — Remedies — Certiorari and prohibition — Reference of matter to
Industrial Court under s 26(2) of Industrial Relations Act 1967 — Whether minister
exercised discretion fairly*

- C The applicant had given a special salary increment to employees recruited
from Sarawak. The union questioned the merits of the said act, contending
that all employees should be given the same. The matter was brought before
the Industrial Relations Department and eventually to the minister when the
parties could not reach an amicable settlement. The minister found that there
was a trade dispute and accordingly referred the matter to heard by the**
- D Industrial Court under s 26(2) of the Industrial Relations Act 1967. This was
the applicant's application for a certiorari to quash the Minister's decision
and a prohibition to prevent the Industrial Court from hearing the matter.**

Held, dismissing the application:

- E The minister had identified that a trade dispute existed between the
applicant and the union relating to the special increment given to the
employees from Sarawak. He had based his decision on an objective
assessment of the facts and materials before him and fairly concluded that
the trade dispute between the applicant and the union was not frivolous or
vexatious and hence merits a reference under s 26(2) of the Act (see para 9).**

F

[Bahasa Malaysia summary]

Pemohon telah memberikan satu kenaikan gaji khas kepada pekerja yang
diambil kerja dari Sarawak. Pihak kesatuan telah menyoalkan merit tindakan
tersebut, sambil mengadu bahawa semua pekerja harus diberikan yang sama.
**G Perkara tersebut dihadapkan ke Jabatan Perhubungan Perusahaan dan
seterusnya kepada menteri bilamana pihak-pihak gagal mendapatkan
penyelesaian damai. Menteri telah mendapati bahawa wujudnya satu
pertikaian perdagangan dan telah merujuk perkara tersebut ke mahkamah
perusahaan di bawah s 26(2) Akta Perhubungan Perusahaan. Ini adalah**

**H permohonan pemohon untuk perintah certiorari untuk membatalkan
keputusan menteri dan satu larangan untuk menghalang Mahkamah
Perusahaan daripada membicarakan perkara tersebut.**

Diputuskan, menolak permohonan tersebut:

- I Menteri telah berpendapat bahawa satu pertikaian perdagangan wujud
antara pemohon dan pihak kesatuan berkenaan kenaikan khas yang telah
diberikan kepada pekerja dari Sarawak. Dia telah mendasarkan**

keputusannya atas penilaian fakta di hadapannya dengan objektif dan dengan adilnya memutuskan bahawa pertikaian perdagangan di antara pemohon dan kesatuan tidak remeh dan menyusahkan dan oleh itu mengharuskan satu rujukan dibuat di bawah s 26 Akta tersebut (lihat perenggan 9).]

Notes

For cases on certiorari and prohibition, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 185–418

Cases referred to

National Union of Hotel, Bar and Restaurant Workers v Minister of Labour and Manpower [1980] 2 MLJ 189 (refd)

Legislation referred to

Industrial Relations Act 1967 s 2, 26(2)

Gan Khong Aik (Lee Hishamuddin) for the applicant

Umi Kalthom Binti Abdul Majid SFC (AG's Chambers) for the first respondent

Vickneswaren (Murugavell Arumugam & Co) for the third respondent

Raus Sharif J:

[1] This is an application by the applicant for an order of Certiorari to quash the decision of the first respondent, the Honourable Minister of Human Resources ('the Minister') dated 15 October 2001 for referring the representation of the third respondent ('the union') under s 26(2) of the Industrial Relations Act 1967 ('the Act') to the second respondent ('the Industrial Court'). The applicant is also seeking a prohibition order against the Industrial Court from entertaining and adjudicating the reference.

[2] The relevant facts giving rise to this application are as follows: The union vide a letter dated 3 April 1997, informed the applicant that they had knowledge that a special increment of RM50 was given to all employees recruited from Sarawak. Vide the same letter, the union informed the applicant that the said special increment to the employees from Sarawak was given without having any discussion with the union and further requested that the same special increment in salary to be given to all other employees of the applicant. There was no reply from the applicant. Thereafter, the union issued another letter dated 3 June 1997. The applicant responded vide a letter dated 11 June 1997, denying and saying that none of the staff had ever been given a special increment and that the so-called special increment was only a salary adjustment.

[3] The union raised the issue officially with the Industrial Relations Department. A conciliation meeting was held on 3 July, however, the meeting failed to reach any form of amicable settlement between the

- A** concerned parties. In view of the failure of an amicable settlement, the dispute was then referred to the Minister who came to a conclusion that the dispute was a trade dispute. The Minister referred the matter to the Industrial Court under s 26(2) of the Act.
- B** [4] It is dissatisfaction with the Minister's decision which has led to the application before this court. The crux of the applicant's case is that the Minister was wrong in deciding the dispute between the applicant and the union was a trade dispute. The applicant in their submission, argued that there was no trade dispute between the applicant and the union since the dispute between them does not fall within the ambit of s 2 of the Act. Section 2 of the Act reads as follows:
- C** 'Trade dispute' means any dispute between an employer and his workmen which is connected with the employment or non-employment or the conditions of the work of any such workmen;
- D** [5] The Minister in his affidavit which was affirmed on 19 June 2002, averred that he had exercised his discretion within the boundaries of the principles of reasonableness and that the reference was made after having considered all relevant factors before him in forming an opinion that there was a trade dispute. Based on the facts before him, the Minister was satisfied that there was indeed a trade dispute calling for adjudication by the Industrial Court. The issue is whether the salary increment for the sum of
- E** RM50 given to the employees from Sarawak was based on good performance or should it be given to all other members of the applicant and, by not doing so, does it contravene the collective agreement. To the Minister, the dispute is a trade dispute which involved serious questions of fact and law which require full investigation by the Industrial Court, which is the body to whom Parliament has vested the relevant adjudicatory power.
- F** Thus, the Minister claimed that he has rightfully exercised his discretion under s 26(2) of the Act to refer the matter to the Industrial Court.
- G** [6] In furtherance of that, it was submitted for the Minister that even though salary increment is a management prerogative, as far as the applicant is concerned, the terms of employment of its employees are governed by the collective agreement between the two parties. If the increment was not done in accordance with the terms of the collective agreement, then the issue would be acknowledged as a trade dispute between the parties because it affects the terms of employment as defined in s 2 of the Act.
- H** [7] Thus, the issue before this court is, whether the Minister has rightfully exercised his discretion under s 26(2) of the Act. Section 26(2) of the Act reads as follows:
- (2) The Minister may of his own motion or upon receiving the notification of the Director General under section 18(5) refer any trade dispute to the Court if he is satisfied that it is expedient so to do:
- I** [8] I am of the view, on the facts of this case, that the Minister had exercised his discretion in a manner which was in accord with the intention of the Act. In the case of *National Union of Hotel, Bar and Restaurant Workers*

v Minister of Labour and Manpower [1980] 2 MLJ 189, Raja Azlan Shah CJ Malaya (as he then was) in his judgement states that the word 'discretion' should be construed as follows:

... that the court calls this 'discretion' meaning that the decision is one for the Minister to make, and not for the courts. It is a matter of discretion depending upon the satisfaction of the Minister with respect to the expediency of making such reference. But if the Minister, by reason of his misconstruing the Act or for some other reason, so exercises his discretion in a way as to defeat the policy and object of the Act, than he has clearly exercised it wrongly. In that case the courts will interfere with the exercise of his discretion by saying that he has given no weight, or has given insufficient weight, to the considerations that ought to have weighed with him, or if he has been influenced by considerations which ought not to have weighed with him.

[9] Thus, to me, as long as the Minister exercises the discretion without improper motive, the exercise of discretion must not be interfered with by the court unless he had misdirected himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or his decision militates against the object of the statute. On the facts of this case, this court finds that the Minister has exercised his discretion in accordance with the law. The Minister has identified that a trade dispute existed between the applicant and the union relating to the special increment given to the employees from Sarawak. To me, the Minister has based his decision on an objective assessment of the facts and materials before him and has fairly come to the conclusion that the trade dispute between the applicant and the union was not frivolous or vexatious and hence merits a reference under s 26(2) of the Act.

[10] In conclusion, I am of the view that the Minister in reaching his decision did not commit any error that warrants interference by way of judicial review. In the circumstances, the applicants' application is hereby dismissed with costs.

Applicants' application dismissed with costs.

Reported by AG Kalidas